

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Michigan Electric Transmission Company, LLC

Docket No. ER02-320-007

ORDER ACCEPTING EXTENSION OF RATE
MORATORIUM AND DEFERRAL MECHANISM

(Issued May 28, 2004)

Introduction

1. In this order we will grant Michigan Electric Transmission Company, LLC's (METC) request to extend, by one year, the term of METC's deferral mechanism and rate moratorium through the end of calendar year 2005.¹ This order benefits customers because it extends a rate moratorium and allows proper recovery of costs related to transmission upgrades and expansion, which provides transmission rate certainty during the transition to retail competition in the state of Michigan. In addition, this order furthers our policy of encouraging investment in our nation's transmission infrastructure by enhancing the ability of METC to attract capital.

Background

2. In the Trans-Elect Orders, the Commission conditionally approved the transfer of jurisdictional transmission assets that subsequently led to the first independent, stand-alone transmission company. However, the Commission declined to extend the deferral mechanism and rate moratorium that METC requested² beyond December 31, 2004, the

¹ See Trans-Elect, Inc. et al., 98 FERC 61,142 (2002), order on reh'g, 98 FERC ¶ 61,368 (2002) (Trans-Elect Orders).

² METC is authorized to defer and recover, beginning January 1, 2005: (1) depreciation and return on investment in new transmission facilities incurred during the period January 1, 2001, through December 31, 2004; (2) the amount of accumulated deferred income taxes included on METC's balance sheet at closing, to be amortized for recovery over a twenty-year period; and (3) the carrying costs on those deferred amounts accrued each year through December 31, 2005. The rate moratorium and deferral mechanism were accepted as innovative rate treatments under section 35.34(e) of the Commission's regulations, 18 C.F.R. § 35.34(e) (2003).

cut-off date for innovative rate treatments set forth in the Commission's regulations.³ The Commission explained that METC could file with the Commission proposed rate treatments for service beyond January 1, 2005, at least sixty days before the end of the moratorium period.⁴ Now, METC requests a one-year extension of the deferral mechanism and rate moratorium approved for METC.

Notice of Filing, Interventions, Protest, and Answers

3. Notice of the filing was published in the Federal Register, 69 Fed. Reg. 12,314 (2004), with comments, protests, and interventions due on or before March 24, 2004.
4. The Michigan Public Power Agency and the Michigan South Central Power Agency (collectively, the Michigan Agencies) filed a timely motion to intervene and protest.
5. Consumers Energy Company (Consumers) filed a timely motion to intervene and comments in support of METC's request. Wolverine Power Supply Cooperative, Inc. (Wolverine) and The Detroit Edison Company (Detroit Edison) submitted timely motions to intervene, without substantive comments.
6. METC filed an answer on April 8, 2004. The Michigan Agencies replied to METC's answer and on April 29, 2004, withdrew their protest, stating that their concerns will be addressed in another proceeding.

Discussion

Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.
8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept METC's or the Michigan Agencies' answers and will, therefore, reject them.

³ 18 C.F.R. § 35.34(e)(4) (2003).

⁴ Trans-Elect, Inc. et al., 98 FERC ¶ 61,142 at 61,423 (2002).

METC's Proposal

9. METC requests a one-year extension of the deferral mechanism and rate moratorium approved for METC in the Trans-Elect Orders. METC states that authorization is necessary to permit METC to recover, via the extended deferral mechanism, the following costs: (1) annual depreciation for 2005 associated with the transmission plant placed in service during the 2001-2005 period and (2) the debt and equity return for 2005 on the un-depreciated amount of such transmission plant additions.

10. METC asserts that the Commission's reluctance in the Trans-Elect Orders to extend the rate moratorium and deferral mechanism beyond December 31, 2004, was based on section 35.34(e)(4) of the Commission's regulations, 18 C.F.R. § 35.34(e)(4) (2003), which establishes December 31, 2004, as the cut-off date for innovative rate treatments. METC also points out that the Commission specifically stated that METC could seek an extension of the rate moratorium and the deferral mechanism, if METC supports its proposal on grounds other than reliance on section 35.34(e)(4).

11. METC asserts that because of an obligation in the Membership Interests Purchase Agreement (MIPA),⁵ METC cannot adjust its transmission and ancillary service rates before January 1, 2006. METC states that it has incurred and will continue to incur significant capital expenditures because it is making significant system improvements.⁶ METC asserts that the extension of the rate moratorium and deferral mechanism is necessary to provide it with a reasonable opportunity to recover all planned and incurred capital expenditures through December 31, 2005.

⁵ The MIPA governed the transfer of jurisdictional transmission assets from METC to Trans-Elect facilitating the creation of the first independent stand-alone transmission company.

⁶ Specifically, METC explains that the capital expenditure projects include costs of \$11.1 million for interconnections with independent power producers, \$12.6 million for a comprehensive circuit breaker replacement program, and \$9.5 million for the installation of a new transformer in its highest load area, as well as other planned reliability enhancements including lightning analysis and mitigation, and ground and helicopter system mapping initiatives.

Commission Determination

12. We note that under the MIPA, METC cannot adjust its transmission rates before January 1, 2006.⁷ We find that extending the rate moratorium and deferral mechanism for an additional year will give METC a reasonable opportunity to recover the cost of capital expenditures it has or will incur to build the infrastructure and service enhancements. Granting METC's request will also provide transmission rate certainty during the transition to retail competition in the state of Michigan. In addition, the proposed extension of the rate moratorium and deferral mechanism is consistent with our policy initiatives encouraging the investment in grid infrastructure and the development of independent transmission companies.

13. Therefore, we will accept METC's proposed extension of the deferral mechanism and rate moratorium through December 31, 2005.

The Commission orders:

(A) METC's and the Michigan Agencies' answers are hereby rejected for the reason stated in the body of this order.

(B) METC's request for an extension of the deferral mechanism and rate moratorium through December 31, 2005, is hereby granted for the reasons stated in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

⁷ See Michigan Public Service Commission Orders included as Schedule 5.13 of the MIPA.